RCED-89-42

United States General Accounting Office

GAO

Report to the Chairman, Committee on Environment and Public Works, U.S. Senate

COMPLETED

December 1988

WATER RESOURCES

Corps of Engineers' Transfer of Three Townsites

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Resources, Community, and
Economic Development Division

B-230106

December 29, 1988

The Honorable Quentin N. Burdick
Chairman, Committee on Environment
and Public Works
United States Senate

Dear Mr. Chairman:

This report responds to your September 11, 1987, letter and subsequent discussions with your office regarding the U.S. Army Corps of Engineers' July and August 1986 transfers of the Fort Peck, Montana; Riverdale, North Dakota; and Pickstown, South Dakota, townsites to local ownership. Specifically, the report provides information on (1) whether the Corps neglected to properly maintain the townsites' public facilities prior to the transfer, (2) the ownership of and the maintenance responsibilities for the Riverdale school building, and (3) whether the Corps or another federal agency is liable for repairing the public facilities and the school building.

Background

In the 1930s and 1940s, the Corps constructed the three townsites to serve as headquarters for Corps personnel and others while the Fort Peck, Garrison, and Fort Randall dam projects were being built on the Missouri River. Afterwards, the townsites provided a permanent settlement for the limited number of Corps personnel who operate and maintain the projects. On August 15, 1985, the Supplemental Appropriations Act of 1985 authorized the transfer of the three townsites to the municipal corporations serving the townsites' inhabitants, at no cost and without warranty as to the condition of the townsite facilities. Subsequent legislation authorized the Secretary of the Army to warrant the titles to the townsite deeds, to provide for the transfer of additional lands needed for public services, and to operate the townsites' electrical distribution systems for up to 3 years after the transfer date.

Results in Brief

In summary, the Corps consistently provided financial support for upkeep of the three townsites' public facilities. The Corps' estimated operations and maintenance expenditures for the three townsites totaled $17.4 million for the 13 years from fiscal year 1974 (the earliest year that such records were available) through fiscal year 1986. The expenditures averaged $1.5 million a year during the last 5 years prior to the transfers. In terms of 1988 dollars, the Corps spent relatively the

same amount on operations and maintenance during the 1985-86 period, when the transfer decision was being finalized, as it did during the 1974-78 period, when there was no plan to discontinue federal ownership. Additionally, the Corps spent about $8.7 million since fiscal year 1981 to rehabilitate and improve the townsites' road, water, electrical, and sewer systems, in some cases in anticipation of the townsites' disposal. Our analysis clearly demonstrated the Corps' effort to maintain the townsites' public facilities. (See app. II.)

The federal government owned the Riverdale school building from 1948, when it was constructed, until the July 1986 transfer. Since 1951, however, the Riverdale School District had responsibility for the operation, maintenance, and condition of the school building in accordance with an agreement between the school district and the then U.S. Commissioner of Education. An October 1986 U.S. Department of Health and Human Services (HHS) survey for the Department of Education identified about $1 million in repairs needed to bring the school building into compliance with local, state, and federal standards for educational buildings. (See app. IV.) Because the public law authorizing the transfer and the deeds transferring ownership did not include any representations as to the condition of the townsite facilities, because there was no federal contractual obligation, and because there does not appear to be an appropriate basis for a claim under the Federal Tort Claims Act, no federal liability exists for repair work now needed at the townsites and the school. The Riverdale School District may be eligible for federal assistance from the Department of Education, but Education officials told us that funding is limited. (See app. III.)

The transfer has provided the City of Riverdale with resources which could be used for operations, maintenance, and capital improvements. The City of Riverdale obtained $2 million from the sale of the homes transferred to it. According to the Riverdale mayor, the city received $300,000 in cash and holds 5- to 20-year mortgages for the remaining $1.7 million. (See app. II.)

Scope and Methodology

To obtain information for this report, we interviewed Corps officials in Washington, D.C.; the Omaha, Nebraska, district office; and Riverdale, North Dakota. We visited the City of Riverdale to review city records and to discuss with the mayor and various city officials the condition of public facilities, particularly the Riverdale school. As agreed with your office, we did not visit Pickstown or Fort Peck. We reviewed documents and reports on the Corps' maintenance and rehabilitation of the three

townsites, and reviewed the Corps' accounting records for the townsites' operations and maintenance costs covering fiscal years 1974 through 1987. As agreed with your office, we did not verify these costs or obtain evidence that the work was done.

We interviewed Department of Education officials in Washington, D.C., and reviewed Education records regarding ownership and maintenance responsibilities for the Riverdale school. We also obtained data from and discussed the condition of the Riverdale school with an HHS engineering official in Seattle, Washington, and discussed the Riverdale School District's relationship to the state with a North Dakota Department of Public Instruction official in Bismarck, North Dakota. Our work was conducted between November 1987 and April 1988.

Agency Comments

The Assistant Secretary of the Army (Civil Works), on behalf of the Department of Defense, concurred with our report and offered no further comments. (See app. V.)

The Assistant Secretary for Elementary and Secondary Education, on behalf of the Department of Education, concurred in the overall findings of our report and provided technical and clarity points. We considered these comments and made changes where appropriate. (See app. VI.)

At their request, we met with officials of the Riverdale, North Dakota, School District in October 1988 to obtain their oral comments on the draft report's discussion of federal liability for Riverdale school building repairs. We considered their views and made changes where appropriate. (See app. III.)

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Secretary of Defense, the Secretary of the Army, the Secretary of Education, and

other interested parties. Major contributors to this report are listed in appendix VII.

Sincerely yours,

James Duffus III
Associate Director

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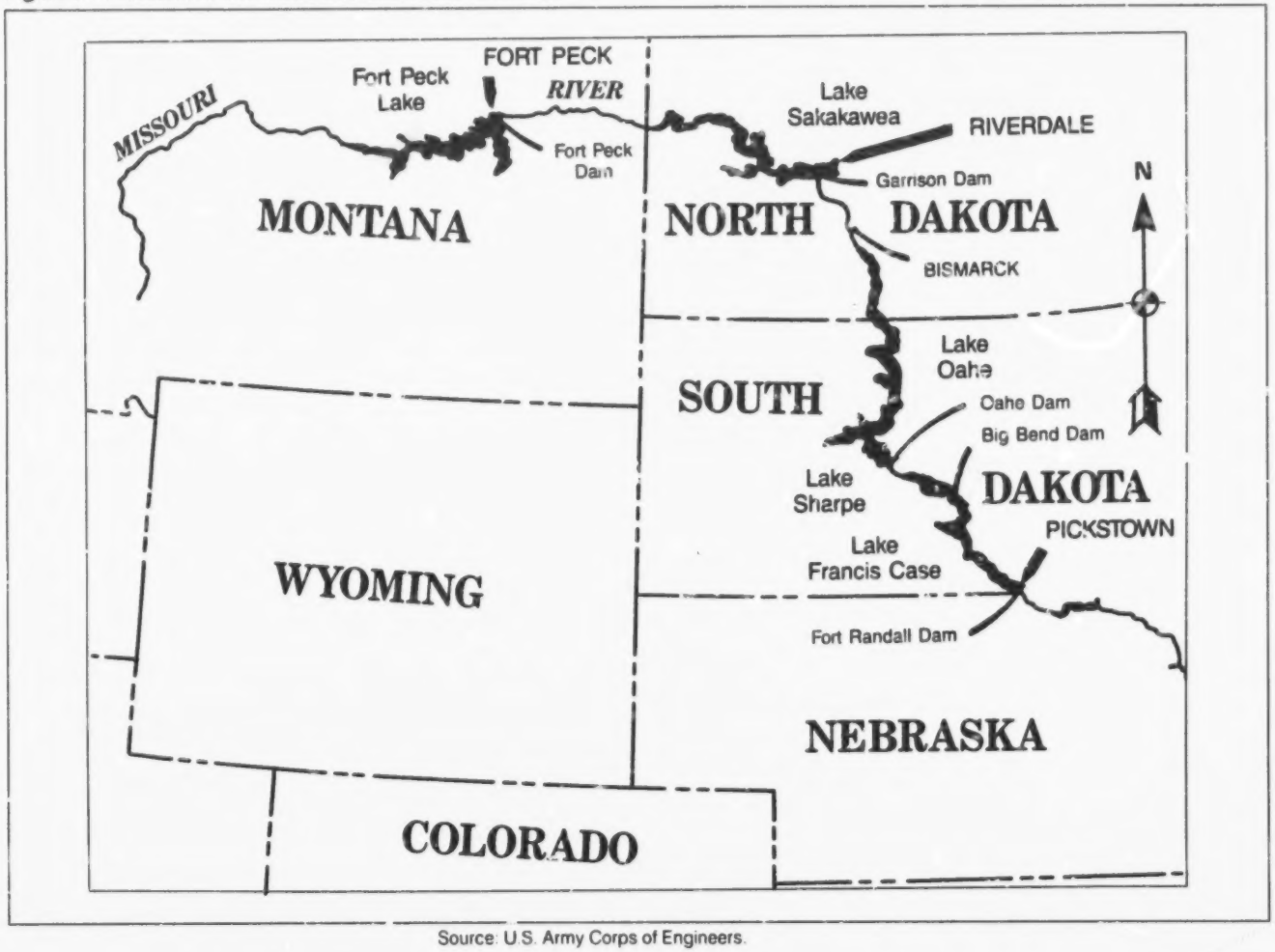
Abbreviations

GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
HHS	Department of Health and Human Services

Background on the Three Corps' Missouri River Townsites

In the 1930s and 1940s, the U.S. Army Corps of Engineers constructed the townsites of Fort Peck, Montana; Riverdale, North Dakota; and Pickstown, South Dakota. These townsites served as headquarters for the Corps' Fort Peck, Garrison, and Fort Randall, Missouri River dam projects. The townsites are situated in remote locations along the upper Missouri River. Each townsite has provided a permanent settlement for a limited number of Corps personnel who operate and maintain the projects. (See fig. I.1 and table I.1.)

Figure I.1: Location of the Three Missouri River Townsites



Source: U.S. Army Corps of Engineers.

Table I.1: Basic Townsite Data

Townsite	Date of construction	Approximate size	1985 population	Location
Fort Peck	1934	571 acres	252	Valley County, Mont.
Riverdale	1946	392 acres	325	McLean County, N.D.
Pickstown	1946	393 acres	125	Charles Mix County, S.D.

The Congress authorized the Fort Peck project under provisions of the Public Works Administration Act of 1933. It authorized the Garrison and Fort Randall projects by the Flood Control Act of 1944.

Townsite Transfer Chronology

After many years of operating and maintaining the three townsites, the Corps' Omaha district officials decided that it was no longer financially practical for the federal government to continue to do so. In August 1978, the district organized a task force to study various alternatives to discontinue federal ownership and operation of the townsites. The task force determined that the most practical and acceptable alternative was to provide the townsites residents the opportunity to buy their own homes and transfer the townsites to independent community development. A November 1979 consultant's study concluded that, with special federal legislation authorizing the sale, a townsite sale was feasible.

In the early 1980s, Corps officials drafted legislation to authorize a government sale of the townsites. The proposed legislation provided preferences for current residents to buy their homes and for federal financial assistance to the respective communities. The proposed legislation was not enacted and, on January 25, 1985, the Acting Assistant Secretary of the Army directed the Corps' Chief of Engineers to dispose of the townsites using the General Services Administration's (GSA) procedures for surplus real property disposal. Corps officials told us that under the GSA disposal procedures, the home purchase preference and the financial assistance would not have been included.

In a June 13, 1985 report, the Senate Committee on Appropriations recommended language in the Supplemental Appropriations Bill of 1985 authorizing the Corps of Engineers to transfer the townsites. On August 15, 1985, the Supplemental Appropriations Act of 1985, Public Law 99-88, authorized the transfer, at no cost and without warranty of any kind as to the condition of the townsite facilities, of the three townsites to the municipal corporations serving the inhabitants of those townsites. In July and August 1986, as agent for the federal government, the Corps transferred ownership of the townsites, including hundreds of houses

and other buildings, to the respective municipal governments. The municipal governments have subsequently sold many of the houses to their residents.

On November 17, 1986, the Water Resources Development Act of 1986, Public Law 99-662, amended the transfer legislation by authorizing the Corps to warrant the titles to the deeds and by providing for the transfer of additional lands within the townsites for such items as sewage lagoons and water storage reservoirs. In addition, the Supplemental Appropriations Act of 1987, Public Law 100-202, enacted on December 22, 1987, authorizes the Secretary of the Army, for no more than 3 years from the transfer date, to continue to operate and maintain the townsites' electrical distribution systems, including street lights. The act also directs the Secretary to provide or assume the cost of electrical power, natural gas, and liquified petroleum gas for buildings and facilities owned and operated by the municipal corporations and for public school buildings located within the municipalities for the same period.

The Townsites' Public Facilities Were Maintained

Corps officials estimated that, during fiscal years 1974-86, the Corps spent a total of about $17.4 million for operations and maintenance of the three townsites. In the 5 years preceding the transfers, the average expenditure was about $1.5 million for each year. Additionally, the Corps spent about $8.7 million since 1981 to rehabilitate and improve the townsites' roads, and the water, electrical, and sewer systems, in some cases in anticipation of the townsites' sale or transfer. These expenditures demonstrate the Corps' efforts to maintain the townsites' public facilities. No funds were expended on the Riverdale school, which is the local school district's responsibility. Appendix III discusses the Riverdale school.

Operations and Maintenance Expenditures

The Corps' accounting system accumulates operations and maintenance expenditures by water resource project, and does not separate expenditures for each townsite. For example, the Garrison Dam project account included maintenance and repair costs of all houses and buildings in Riverdale, as well as the costs to maintain and operate the Garrison dam project and power plant. The Corps estimated for us the townsite operations and maintenance costs as a percentage of total operations and maintenance costs at each project on the basis of its judgment and experience. The Corps applied these percentages consistently when it estimated the operations and maintenance costs for the townsites. Table II.1 shows the Corps' estimated operations and maintenance expenditures for fiscal year 1974 (the earliest year that such records were available) through fiscal year 1986 at the three townsites.

Table II.1: Corps' Estimated Townsite Operations and Maintenance Expenditures

Dolars in thousands

Fiscal year	Fort Peck	Riverdale	Pickstown	Total
1974	$317.3	$271.4	$212.5	**$801.2**
1975	410.7	329.7	281.6	**1,022.0**
1976	471.2	502.2	308.5	**1,281.9**
1977	492.4	369.1	232.1	**1,093.6**
1978	505.9	427.9	326.7	**1,260.5**
1979	553.7	500.3	373.1	**1,427.1**
1980	600.0	549.3	320.9	**1,470.2**
1981	745.0	557.3	290.2	**1,592.5**
1982	612.9	502.5	317.2	**1,432.6**
1983	550.8	592.2	337.9	**1,480.9**
1984	588.7	618.1	364.6	**1,571.4**
1985	599.4	500.0	382.3	**1,481.7**
1986	671.8	416.1	429.3	**1,517.2**
Total	**$7,119.8**	**$6,136.1**	**$4,176.9**	**$17,432.8**

Source: U.S. Army Corps of Engineers, Omaha District

Rehabilitation Expenditures

In June 1981, the Corps received studies from an independent consultant which included an evaluation and recommendations regarding public facility rehabilitation needs for each townsite. The purpose of these studies was to reduce operations and maintenance costs for the first 5 years after sale and incorporation of the towns. Because Corps officials anticipated legislation authorizing a government sale of the townsites, the Corps proceeded with rehabilitation projects on the basis of these studies.

Between fiscal years 1981 and 1987, the Corps completed public facility rehabilitation projects totaling $8.7 million at the three townsites. These projects included rehabilitation or new construction work involving road, water distribution, electrical distribution, and sewer systems. Contracts for the spending incurred in fiscal years 1986 and 1987 were entered into before the townsites' transfer. Table II.2 shows the projects and their contract costs.

Table II.2: Major Townsite Construction and Rehabilitation Projects, Fiscal Years 1981-87

Dollars in thousands

Type of project	Ft. Peck	Riverdale	Pickstown	Total
Electrical distribution	$669.0	$658.0	$402.0	**$1,729.0**
Storm sewer	258.0	•	•	**258.0**
Townsite roads	708.5	•	548.6	**1,257.1**
Wastewater flow meter	•	21.0	•	**21.0**
Water & sewer distribution	1,277.3	1,085.0	625.0	**2,010.8**
Water line replacement	•	286.0	•	**286.0**
Water supply facility	•	394.0	•	**394.0**
Water tank	•	186.0	•	**186.0**
Water treatment plant	802.3	763.0	49.0	**1,614.3**
Total	**$3,715.1**	**$3,393.0**	**$1,624.6**	**$8,732.7**

The projects include the rehabilitation of Pickstown's water treatment plant and the construction of new water treatment plants at Riverdale and Fort Peck. The Corps also rehabilitated sewer, water distribution, and electrical systems in all three towns.

We analyzed the level of expenditures for operations, maintenance, and rehabilitation, in terms of 1988 dollars.[1] Figure II.1 shows a steady level of operations and maintenance expenditures over the 13-year period of fiscal years 1974-86. In effect, the Corps spent relatively the same amount on operations and maintenance during fiscal years 1985-86, when the transfer decision was being finalized, as it did during fiscal years 1974-80, when there was no plan to discontinue federal ownership. For the rehabilitation projects, we assumed that costs for each project were incurred equally over the years that each project was under construction because data on the total spent for each project in each year were not available. Figure II.1 also shows that rehabilitation project funding was the highest in fiscal years 1982-84.

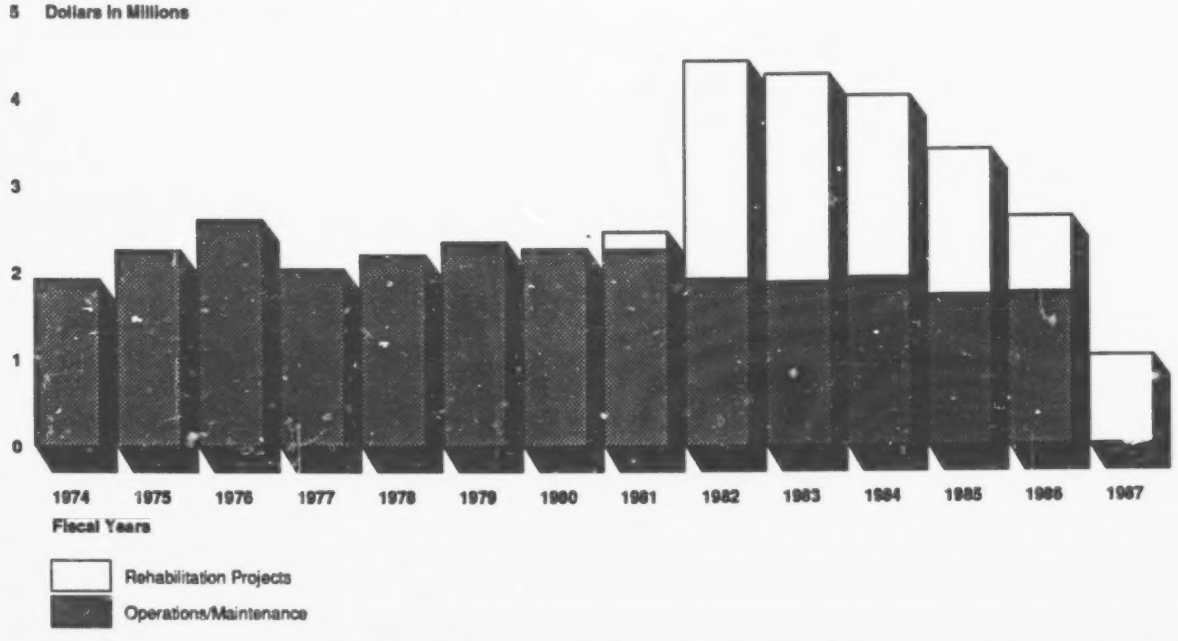
Riverdale Road Repairs

The September 11, 1987, request letter discussed the City of Riverdale's study finding street repair needs in excess of $500,000 despite the Corps' assurance that only minor repairs were needed.

In general, the Corps made major street repairs on an 8-year cycle. Pickstown and Fort Peck received street repairs in fiscal years 1976 and 1977, respectively, and again in fiscal years 1984 and 1985. Since the

[1]To convert expenditures to 1988 dollars, we used the Department of Defense deflator for civilian pay because most operations and maintenance expenditures were for civilian personnel.

Figure II.1: U.S. Corps of Engineers Spending on Operations/Maintenance and Rehabilitation of the Three Missouri River Townsites, in Terms of Current 1988 Dollars



Corps made major street repairs in Riverdale in 1979, and the townsite transfer took place in 1986—1 year less than the 8-year cycle for street repairs—no additional street repairs were made in Riverdale prior to the transfer. The mayor of Riverdale and city council representatives told us that Corps officials had made verbal promises at various times before the transfer to do street repairs in Riverdale, but no work was done. An engineering survey commissioned by the City of Riverdale in June 1987 estimated the cost of street repairs and reconstruction at $576,840.

The Corps' fiscal year 1987 operations and maintenance budget request included $406,000 to renovate streets and sidewalks in Riverdale. However, according to an Omaha District Office memo dated August 29, 1985, 2 weeks after the transfer legislation was enacted, the Assistant Secretary of the Army for Civil Works directed that no further improvements other than routine maintenance be done at the townsites. The Corps' Omaha District Office representatives told us that the Secretary's

direction did not affect the rehabilitation projects already funded in previous budgets. However, since the renovation of the Riverdale streets and sidewalks was not yet funded, the Corps deleted it from the fiscal year 1987 budget proposal.

In an April 1986 meeting, Corps officials informed Riverdale officials that the Corps would not resurface the city streets because street work planned for Riverdale had been deleted from the Corps' budget. Nonetheless, the mayor of Riverdale sent a letter to the Corps' Omaha District Commander on May 1, 1986, which included a request for city street work. On May 19, 1986, the mayor and the District Commander met to discuss the city's request. In a May 29, 1986, letter from the District Commander to the mayor documenting their meeting, the Corps agreed to seal cracks and patch potholes but stated it would not complete major street repairs before the townsite transfer. The District Commander asked the Riverdale mayor to review the letter to ensure his concurrence with the Corps' plan. The Corps received no further correspondence from the city on this matter before the transfer took place.

The transfer has provided the City of Riverdale with resources which could be used for operations, maintenance, and capital improvements. According to the Riverdale mayor, the city sold all but one of the homes transferred to it, for a total of about $2 million. The purchasers were generally the individuals who occupied the homes at the time of the townsite transfer. The city received over $300,000 in cash and holds 5- to 20-year mortgages for the remaining $1.7 million from these home sales. Riverdale's accounting records also show that, as of December 31, 1987, the city had about $500,000 in cash, certificates of deposit, and various accounts such as capital improvement funds. The records also show that, in 1987, the City of Riverdale projected property tax collection of about $5,000 for fiscal year 1988.

Ownership and Maintenance of the Riverdale School

The federal government owned the Riverdale school building from the time of its construction in 1948 until the 1986 townsite transfer to the City of Riverdale. However, since 1951, the Riverdale School District had responsibility for the operation, maintenance, and condition of the school building in accordance with a permit signed in 1953[1] by the school district and the U.S. Commissioner of Education.[2] A Department of Health and Human Services (HHS) 1986 survey for the Department of Education identified about $1 million in repairs to bring the school into compliance with local, state, and federal standards for educational buildings. (See app. IV for details.) However, because the public law authorizing the transfer and the deeds transferring ownership did not include any representations as to the condition of the townsite facilities, because there was no federal contractual obligation, and because there does not appear to be an appropriate basis for a claim under the Federal Tort Claims Act, no federal liability exists for any repair work now needed at the school. As the current owner of the school, the City of Riverdale is now financially responsible for the repairs.

School Ownership and Operation History

The Corps constructed the original Riverdale school building in 1948 on property which was part of North Dakota Victoria School District Number 7. According to a North Dakota Department of Public Instruction official, the Victoria School District had existed since 1906 and the Riverdale School District Number 89 was created in March 1951 from Section 3 of the Victoria District.

The North Dakota State Department of Public Instruction has recognized the Riverdale School District as a public school district since 1953. Thus, the Riverdale School District has been subject to the same state requirements for teacher qualifications and curriculum as any other school district in the state, and it has received the same financial support.

Permit to Operate and Maintain the School

The Corps granted a permit, effective July 1, 1951, to the U.S. Commissioner of Education to use and occupy the Riverdale school building for school purposes. The Commissioner of Education, in turn, granted a permit (effective the same day) to the Riverdale School District Number 89 to use and occupy the school until the permit was terminated by mutual

[1]Although signed in 1953, the permit was made effective as of July 1, 1951.

[2]The Department of Education Organization Act, P.L. 96-88, dated October 17, 1979, established the Department of Education and redesignated the noneducation portion of the Department of Health, Education, and Welfare as the Department of Health and Human Services.

agreement of the parties or revoked by the Commissioner. Condition 4 of the school district permit requires the district to operate and maintain the school, and provides:

"That the Agency (Riverdale School District #89) shall maintain and keep the Property in good repair and operating condition (including repair or reconstruction due to damage occasioned by any risk, such as fire or the elements, to which the property is exposed) on the present site, and, immediately upon termination of this permit as herein provided, will return same to the Commissioner in as good condition and state of repair as the property is in when delivered to the Agency, reasonable wear and tear and loss or damage caused by war excepted. Repair to or reconstruction of property requiring expenditures in excess of $500.00 shall be upon plans approved by the Commissioner."[3]

The permit was signed by the President of the Riverdale Board of Education and the Acting U.S. Commissioner of Education.

After the original school construction, a boiler room and elementary school building were added in 1963 and 1971, respectively, to the original Riverdale school building structure. HHS Office of Engineering Services and Department of Education documents indicate that the additions were funded by federal agencies that preceded Education. (See figs. III.1 and III.2.)

[3]The $500 threshold was raised to $1,500 by an amendment to the Riverdale School District permit from the Department of Health, Education, and Welfare dated September 7, 1965.

Figure III.1: Original 1948 Wood-Frame Section of the Riverdale School

GAO photo taken in January 1988.

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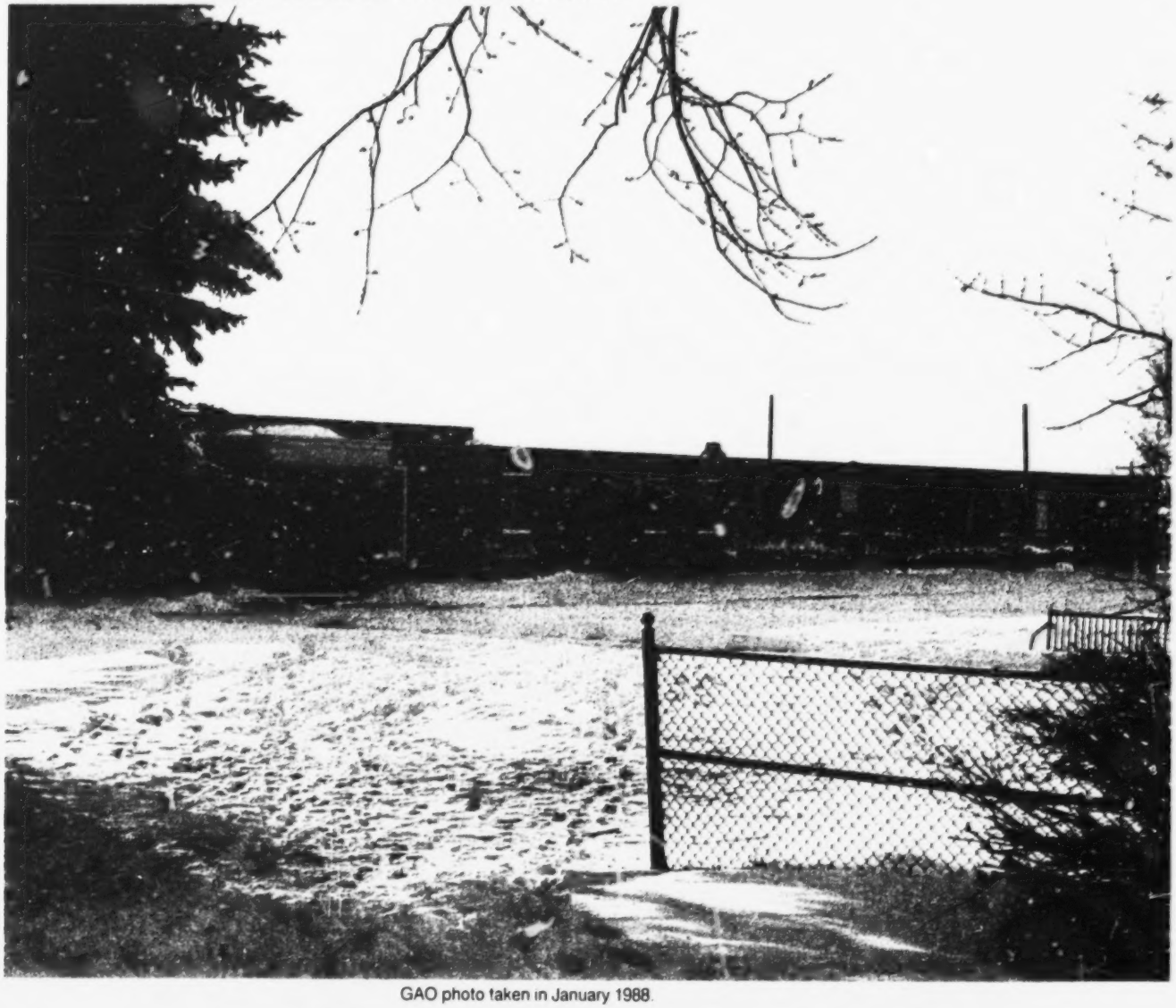
Figure III.2: 1971 Elementary School Addition to the Riverdale School



GAO photo taken in January 1988.

Repair Needs Identified Before the Transfer

According to a 1979 Department of Health, Education, and Welfare (HEW) survey, the Riverdale school building needed about $1.1 million in repairs to comply with a National Fire Protection Association Safety

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Code and to make emergency maintenance repairs considered essential to continued safe operation of the school.

According to a January 23, 1981, Corps record of a telephone conversation, the chief of the Department of Education's School Construction Branch discussed with a Corps Omaha District official a request to Education from the Riverdale school superintendent for funds to help the school comply with handicapped and fire safety requirements. The branch chief expressed concern over providing funds to the school if the Corps was going to sell the townsite. The Corps official responded that the Corps would not want Department of Education funding for any improvements at the school to be jeopardized because of a proposed sale of the townsite. Corps district records contained no further reference to this telephone conversation, and we could not locate any Department of Education or Riverdale School District records on whether the funding was approved.

As discussed in appendix II, a June 1981 Corps-requested consultant study recommended the rehabilitation of various public facilities in the Riverdale townsite. According to Omaha District Corps officials, the study did not consider the rehabilitation needs of the Riverdale School because the school was under an operations, maintenance, and repair permit with the Department of Education, and thus was not the Corps' responsibility.

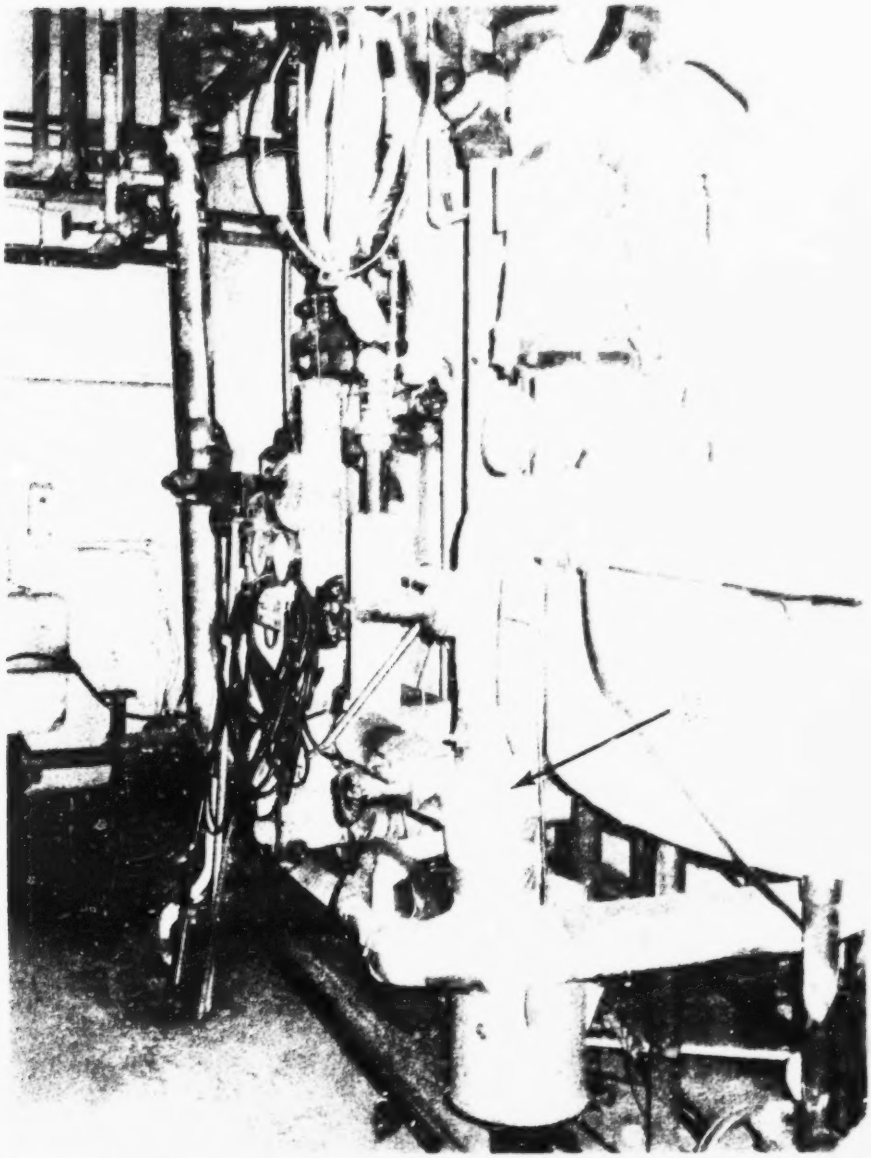
The former Riverdale School superintendent from 1979-86 told us that, just before the 1986 transfer, he told Riverdale city officials that he did not believe the school was in need of any major repairs. The school building, located within the City of Riverdale, was included in the July 22, 1986, transfer of the Riverdale townsite to the City of Riverdale.

Repair Needs Identified After the Transfer

The month after the July 1986 transfer of school ownership to the City of Riverdale, the present superintendent of the Riverdale School District requested Department of Education assistance in renovating the school. Under the assumption that the Riverdale School was still a federally owned school, the HHS Office of Engineering Services, which provides engineering consulting services to Education, made a facilities survey of the Riverdale school on October 21, 1986, to determine the items of maintenance and repair to the school facility which were considered essential to its continued safe operation. (See app. IV for details.)

The 1986 survey identified $42,000 in immediate emergency repairs, including $14,000 for repairs to the heating boiler, and $5,500 for an asbestos survey and hazard assessment. The survey also identified an estimated $952,000 in other repairs needed to bring the school building into compliance with local, state, and federal standards for educational buildings and to keep the building in operating condition. Many of these items were previously identified in the 1979 survey cited earlier. Appendix IV details the repairs listed in the 1986 survey. As of January 1988, the school district had contracted for emergency repairs to the boiler but had not contracted for the asbestos survey and hazard assessment or any of the other repair work. (See fig. III.3.)

Figure III.3: Boiler Room at the Riverdale School



On March 4, 1987, Department of Education representatives told Omaha District Corps and Riverdale school representatives that Education no

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longer had responsibility for the school building because the July 1986 townsite transfer ended federal ownership and, in turn, Education's permit for the building. An Office of Engineering Services official told us that since the Riverdale School was no longer federally owned, the federal government could not require Riverdale to make the repairs identified in the facilities survey. He said that because the Riverdale school is now owned by the City of Riverdale, the state of North Dakota is responsible for inspecting the Riverdale school and ensuring its compliance with state public building standards. As owners of the building, the city would be financially responsible for any repairs needed to comply with the standards.

Some Maintenance Work Has Been Performed

On our site visit to the Riverdale school building in January 1988, we observed that some maintenance work had been done at the school over the years. For example, the main hallway in the original building has been carpeted and newer grounded electrical outlets and lights have been added in the boys' locker room. According to the school superintendent, newer aluminum windows have been installed in the original school building. The superintendent did not know who installed the windows or who paid for the work. We found no maintenance records for the school at the Corps' field or headquarters offices, the school, or the Department of Education in Washington, D.C.

Corps representatives told us that the Corps did some maintenance work at the school as a "good neighbor." School board members told us that the Corps completed plumbing and electrical repairs at the school over the years and that the school district had performed the maintenance required to keep the school open. We could not determine the extent of the maintenance work because the school district did not have maintenance records. According to the former Riverdale school superintendent, the Riverdale school board told him that the school district was responsible for maintaining the school building, and during his term as superintendent from 1979 to 1986, the district did most of the school maintenance as needed.

Legal Liability for Repairs

Neither the transfer legislation, nor the deed for transfer of townsite ownership included any representations as to the physical condition of the Riverdale school. Rather, the City of Riverdale was only entitled to receive buildings within the city, including the school, all in "as is" condition. Therefore, any objections should have been raised before acceptance of the property in order to allow the Corps or Education to

address the school's condition. City of Riverdale officials did bring to the Corps' attention deficiencies they found in other property in Riverdale to be deeded over by the federal government, but they were silent regarding the school's condition until after the transfer.

We considered the federal government's potential liability under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq. Under the provisions of the act, a claimant must show that damage was caused by the negligent or wrongful act of omission of a federal government employee within the scope of his or her employment. Additionally, the negligence or omission must not have been in the performance of a discretionary function.

The repairs and other work needed for the school building did not result from any acts or omissions by federal government employees but rather from physical forces or the upgrading of school building standards. The failure to act to correct deficiencies in the government's own property, whether from inadvertence or as a policy matter, does not appear to be an appropriate basis for a claim under the Federal Tort Claims Act for the costs of repairing the property. Therefore, neither the Corps nor any other federal agency is liable for any repairs that may be needed at the school.

According to Department of Education officials, the Riverdale school may be eligible for federal assistance under section 14(c) of Public Law 81-815, as amended. This section provides for federal assistance to financially distressed schools where federal property constitutes a substantial part of the school district. While Education's budget under this section of the public law is limited, an Education official provided a preapplication package for eligibility determination to the Riverdale school superintendent in March 1987. The school superintendent had not applied for this assistance at the time we completed our work in April 1988.

Agency Comments

The Department of Defense concurred with our report and offered no further comments.

The Department of Education concurred in the overall findings of our report. Education provided marginal comments on a copy of the report, relating to the Riverdale school, and included such matters as the assessed valuation for the school district; the local, state, and federal

standards for educational buildings; and the Federal Tort Claims Act. We considered these comments and made changes where appropriate.

At their request, we met with officials of the Riverdale School District in October 1988 to discuss their views on the draft report's discussion of federal liability for school building repairs.

The Riverdale School District's comments and our response to their major points follow:

- The school officials contended that the terms of the permit giving the school district responsibility for maintenance were not effective because the district was not legally formed when the permit was signed. As indicated earlier in this appendix, the North Dakota Department of Public Instruction verified that the district was validly formed in 1951 from a part of a preexisting district. A state official told us that before the Riverdale district was founded and the permit signed, the Corps paid the state to administer the Riverdale School between 1948 and 1951.
- The officials contended that the Corps did not have statutory authorization to start the Riverdale school. We found that the Flood Control Act of 1946, Sec. 6, authorized the Chief of Engineers to provide school facilities at the Garrison Dam with project funds and enter into arrangements with local agencies for their operation.
- The school officials stated that the federal government has established their obligation to maintain the school by their past behavior of assisting the school with repairs regardless of the terms of the permit. As discussed earlier, we found few records at the federal agencies and no records at the school verifying that federal funds paid for repairs. On the contrary, school board members and the former school superintendent, in documents and in statements to us, said that the school district was responsible for the school's condition and had made repairs as finances allowed.
- The school officials also contended that because of this behavior and the statutes establishing aid for federally owned schools, the terms of the 1951 permit were negated. On this basis, their attorney stated that the school district may have a claim under the Tucker Act, 28 U.S.C. 1491, which provides for claims against the U.S. government for express or implied contracts. We considered the applicability of the Tucker Act but do not believe that the school district has a viable claim in this case. The officials stated, in effect, that an implied-in-fact contract existed as a result of the Corps' actions. However, there can be no implied contract where an express contract (such as the permit) covers the same subject. Additionally, to prove the existence of an implied-in-fact contract, the

school district would have to show (1) mutual intent to contract, (2) an offer and acceptance of such a contract, and (3) that the federal government officer, whose conduct is relied on, had actual authority to bind the government in contract. Further, the school construction aid program is not an entitlement or permanent obligation of the federal government. The aid program is subject to the availability of funds which the Department of Education distributes under program guidelines. Receipt of funds by the school district under this program would not change the terms of the permit.

In summary, we are not persuaded by the arguments of the school district, and we continue to believe that there is no liability of the federal government for the present condition of the Riverdale school building. The permit signed by the school district clearly gave the district the responsibility to operate and maintain the school, and, as the permit directs, return the buildings in as good condition and state of repair as the property was when it was delivered to the school district, less normal wear and tear. As stated above, we do not believe a claim under the Tucker Act, based on past federal repairs to the school or on financial assistance received under the school construction aid program, would be successful.

Repair and Improvement Needs at the Riverdale School

The HHS Region X Public Health Service's Office of Engineering Services' preliminary facility survey on October 21, 1986, identified maintenance and repair items considered essential to continued safe operation of the facility.

The survey team classified repair needs according to three categories: Priority 1—repairs requiring immediate accomplishment; Priority 2—repairs of a critical nature, e.g., life safety deficiencies, which should be accomplished within 1 year; and Priority 3—repairs involving accessibility, energy conservation, and improved operability, which should be accomplished within 2 to 5 years. The survey report noted that Priority 3 repairs were not evaluated.

As described in the HHS report, the school building surveyed was comprised of the following:

- The original structure for the grade and high school of wood frame construction, two stories plus part of the basement—1948.
- The boiler room addition of noncombustible construction, one-story—1963.
- The elementary school addition of noncombustible construction, one story, and high school remodeling work—1971.

The survey noted that the original school building, then almost 40 years old, warranted either a major renovation or a replacement. The report estimated that a minimum of $1 million was required for the Priority 2 items and estimated that a replacement building would cost $2.3 million.

The Priority 1 items urged for immediate action were estimated at $42,000 and consisted of: (1) repairing two boilers,[1] (2) repairing the fire alarm system to make it operational, (3) installing screening of gymnasium lights to minimize safety risk from bulb shatter, (4) adjusting distribution transformer voltage, (5) obtaining an asbestos survey and hazard assessment, and (6) obtaining an architectural-engineering survey for Priority 3 items.

The estimated cost for the Priority 2 items totaled $952,000, including $671,000 for repair costs, and $281,000 for design, contingency, escalation, and construction management and inspection costs.

[1]The school district completed these repairs for the winter of 1986-87.

Original 1948 Structure	
Repair/replace roof wood trim, gutters, downspouts, and ground water drainage; install flashing	$14,200
Replace and/or repair gym flooring	16,620
Replace classroom floors	42,780
Install attic insulation	15,760
Remove attic coupola, install new ventilators	12,500
Modify tempered air intakes in classrooms	3,750
Locker rooms—replace floors, repair ceilings and roof leaks, plaster walls	11,880
Bathrooms—replace floors, repair ceilings and walls	7,890
Replace window shades with fireproof shades	7,500
Gym and stage—replace and rewire house lighting	5,000
Replace exterior doors and rebuild east entry	10,000
Subtotal	**147,880**
1963 Boiler Room Addition	
Repair low-pressure steam boiler	2,000
Replace boiler feed pump	1,000
Replace hot-water tank, add second hot-water heater	2,000
Replace domestic water-softener treatment system	14,000
Replace air intake/venting system	4,000
Subtotal	**23,000**
1971 Elementary School Addition	
Replace two entrance canopies	5,000
Repair concrete floor slabs	30,000
Replace window shades with fireproof shades	3,450
Subtotal	**38,450**

(continued)

General Improvements	
Install emergency power system	75,000
Install or rewire exit signs	8,230
Replace two exit doors	960
Auditorium and stage—replace ceiling/wall finish, replace fire alarm and public address system; install automatic fire extinguisher system, fire-resistant curtain, fire doors and hoses	80,020
Stairs—install emergency lighting, refinish, repaint, add doors, modify enclosure	22,450
Enclose exterior fire escapes	50,000
Provide two exits for every floor area	72,900
Refinish corridors	7,350
Install/modify detection, alarm, communications system	46,200
Install two classroom automatic fire doors	2,280
Install ceiling tiles and fixture covers	4,100
Install emergency lighting and repairs to electric systems	52,910
Install new ventilation systems and repair existing systems	36,710
Replace garage doors	1,640
Exit door hardware for handicapped	1,000
Subtotal	**461,750**
Total of repair costs	**671,000[a]**
Design cost	70,000
10-percent cost contingency	70,000
Construction management and inspection	70,000
8-percent escalation to 1988 cost	71,000
Total	**$952,000**

[a]Subtotal and numbers below it were rounded off by HHS to arrive at total estimate.

Comments From the Department of the Army

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0103

23 SEP 1988

Mr. James Duffus III
Associate Director
Resources, Community, and
Economic Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Duffus:

This is the Department of Defense (DOD) response to the General Accounting Office (GAO) draft report, "WATER RESOURCES: Corps of Engineers' Transfer of Three Townsites," dated September 8, 1988 (GAO Code 140829/OSD Case 7662).

The DOD has reviewed the report, concurs with the GAO findings and conclusions, and has no further comments. The Department appreciates the opportunity to comment on this draft report.

Sincerely,

John Doyle, DEPUTY
for
Robert W. Page
Assistant Secretary of the Army
(Civil Works)

Comments From the Department of Education

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR ELEMENTARY AND SECONDARY EDUCATION

7 OCT 1988

Mr. James Duffus III
Associate Director
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

The Secretary has asked that I respond to your request for our comments on your draft report, Water Resources: Corps of Engineers' Transfer of Three Townsites (GAO/RCED-88-216).

We have reviewed the report and find it is generally factual on issues discussed in the letter and appendix III. We concur in the overall findings of the report; however, specific questions, comments, and suggestions by Department of Education reviewing officials have been noted on the enclosed copy of the report.

Thank you for the opportunity to comment. I and members of my staff are prepared to respond, if you or your representatives have any questions.

Sincerely,

for Beryl Dorsett
Assistant Secretary

Enclosure

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

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